

ATTACHMENT 6
EOSR

January 28, 2002

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

Stacy Baczkowski
Regional Water Quality Control Board
9174 Skypark Crt # 100
San Diego, CA

2002 JAN 28 P 4: 03

Subject: Calavera Hills Phase II and BTB#4

401:000 -135 SLB
Tent Order R9-2002-0014

Dear Ms. Baczkowski :

Preserve Calavera is a grassroots group of north county residents whose goal is the preservation of the Calavera area of northeastern Carlsbad- the largest remaining contiguous native habitat in coastal north county.

We are just learning about the formal permitting process for such projects, and want to make sure that all of the involved agencies are aware of a number of serious problems with the proposed projects. We are especially concerned because of the efforts of the project applicants- McMillin Homes and the City of Carlsbad to rush this process through without adequate time for all of the involved parties to confer and assure that they have complete information upon which to base their decisions.

It is our understanding that the FWS requested an extension of their Biological Opinion until February 20th. We believe that any approval action prior to issuance and review of their findings jeopardizes this area forever. Given the large number of issues that are not resolved, the delay in this formal opinion, and the fact that once this land is destroyed it is very hard to go back and undo the damage- we urge that your permit for this project be denied until all of these issues are resolved.

We plan to review the complete file in your office later today, but wanted to make sure that these preliminary concerns are on record. Also enclosed are copies of correspondence that we submitted to the Army Corps which provides clarification of some of our concerns.(letters of December 2, 2001 and January 9, 2002) Further comment may be submitted during the comment period or at your Board hearing.

We have just reviewed the Draft Carlsbad Watershed Network Management Plan dated 11/13/01. Based on this review we have a number of concerns about the Calavera Hills Phase II and BTB #4 project. This project will impact the watershed draining to Agua Hedionda lagoon- an impaired waterbody for sediment and bacteria. The mitigations proposed for this project will not assure the public that the lagoon has been adequately protected from the upstream impacts caused by this project. Failure to protect the lagoon from the impacts of this project will add to the cumulative impacts on the lagoon. These on-going impacts can result in millions of dollars of public costs to improve the quality of the lagoon- instead of requiring developers to each pay their fair share by properly mitigating their own project.

We find that the project as proposed does not meet the requirements of the NPDES permit regulations (Tentative Order No. 2001-01.)

We therefore request that you address the following specific concerns about this project.

1. Document the performance of each of the proposed detention basins in terms of volume and the sediment particle size that will be settled out.

This is of particular concern because of the condition of the lagoon and recent articles that indicate detention basins fail to settle out the smallest particles- the ones most likely to carry bacteria and other contaminants. (See The Limits of Settling, The Practice of Watershed Protection, Article 57).

How does this particle size relate to the particle size known to be problematic in this watershed?

2. If these detention basins are proposed as the BMP for reducing contaminant loading, provide documentation that they will meet the performance requirements given the projected volumes and anticipated contaminant loads.

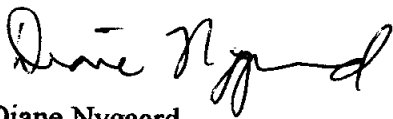
3. The Lake Calavera sub-watershed area is estimated to have 19.3% impervious cover. Impervious cover of over 10% is indicative of a watershed that is already in trouble. This area already exceeds that level and will be further degraded by this project. What percentage increase in impervious cover will be included with this project? What is the proposed mitigation for the impacts of this increase?

4. On what basis do you justify increased storm water flow on top of the existing flows that are already resulting in an impaired watershed?

5. All three of the sub-watersheds in this area are impaired- Agua Hedionda, Los Monos, and Lake Calavera. Interpret the data for the combined impacts on the three sub-watersheds.

The proposed project does not meet the requirements for the NPDES Permit. We therefore oppose the Tentative Order and issuance of the 401 permit and request a hearing on this matter.

Sincerely,



Diane Nygaard
On Behalf of Preserve Calavera

cc: Larry Silver
California Environmental Law Project

att Amy Comp / letters

US Army Corps of Engineers
Regulatory Branch- San Diego Field Office
Attn: CESPL-CO-200100215-SKB
16885 W. Bernardo Drive, Suite 300-A
San Diego, CA 92127

January 9, 2002

Application No: 200100215-SKB
Calavera Hills Phase II Master Plan
Bridge and Thoroughfare District No.4 &
Detention Basins

Dear Ms. Bryant :

There are several recent developments with respect to this project that we would like to bring to your attention. We believe that this is further evidence of the failure of the project applicants to evaluate the least environmentally damaging alternatives for this project- in fact they evidence a flagrant disregard for wetlands protection.

At the January 2, 2002 Carlsbad Planning Commission meeting reviewing the EIR for this project, it was decided to divide Cannon Rd Reach 4 into two segments, and to remove the eastern segment from the EIR in order to do further study related to roadway alignment and elevation. This resulted in moving forward with a 1,200 foot length of this roadway segment. This 1,200 foot piece, according to city staff, was required to provide access to the high school site located at the intersection of College and Cannon Rds.

It is this intersection location where the highest quality riparian habitat is located, where significant wetlands will be impacted. and where environmental organizations and the resource agencies have all expressed concern.

There has been no traffic study that supports the decision to build a 1,200 foot length of roadway. The traffic study in the EIR, a roadway segment analysis, showed that there was essentially no adverse impact from removing Reach 4 of Cannon Rd from the regional roadway network. When this was pointed out to the city and the project applicants, the response was to do another traffic study. Guess what- they finally found a way to do the analysis that got them to the pre-determined answer. This new traffic study used a different methodology- an intersection analysis. This new study with transmittal of November 15, 2001 is included as Attachment A. The intersection analysis methodology used for the new study found that there was a significant adverse impact from removing Reach 4. This study evaluated removing all of Reach 4.

Neither the EIR, the subsequent traffic study, or any or the responses to comments throughout this process proposed dividing Reach 4 into two segments. The first time that I am aware of this issue surfacing was at a meeting on December 30, 2001 between representatives of the ocean Hills Country Club, Brian Militch the developer's representative, and representatives of the city.

The city proposed this as an option that they felt would allow them to protect the intersection location, while satisfying the group that they believed was most likely to proceed to litigation if they were not appeased. The city staff saw this as a great compromise- didn't require them to change anything with the permitting agencies- allowing them to lock in the intersection location in the pending permits(the cheapest roadway alternative- not the least environmentally damaging) while satisfying the concerns of the group they felt had the most power to influence the political decision.

Never has anyone from the city indicated that any traffic study was done that assessed the impacts of just building a 1,200 foot segment of roadway to the high school. They have stated that they believe that if Vista removes the extension of Cannon through Vista from their Circulation Element and this portion of reach 4 is removed from the EIR then it will never be built. If that is true, it is appalling planning to proceed with just 1.200 feet of this road without doing a traffic study. Carlsbad prides itself on compliance with their Growth Management Plan- a Plan that requires an analysis of traffic impacts. When a city conducts two traffic studies of the same roadways with conflicting results the standard practice is to analysis the reason for the differences. No such analysis has been done. Furthermore, the Transportation Manager for the city of Oceanside stated to us that he seriously questioned the methodology and the results of the November study.

The Carlsbad Unified School District submitted a comment letter on the Draft EIR indicating they had serious concerns with the proposed roadway plan. (Included as Attachment B). Reach 4 and detention basin BJB would result in the loss of 7-11 acres of their site and "creates the possibility that there may not be an adequate amount of usable property to adequately accommodate District and state requirements." They informed us that they did not need Reach 4 for access to their site- it was planned off of College Blvd. While city staff stated the reason for the road was to access the school site, the staff at the school said they had no need for the road- in fact they objected to it. We believe that this road is not required for school access- there has been no site planning between the time of their March letter and the January 2, 2002 meeting where it was decided to divide this road into two segments.

Another new development is the removal of the extension of Cannon Rd through Vista. Attachment C is a notice from the City of Vista who is just in the process of a comprehensive update of their Circulation element. They have proposed removing the extension of Reach 4 through Vista from their Circulation Element, and thus removing it from the regional arterial network. The staff of the city of Carlsbad was fully aware of this planned action by Vista, yet they failed to take this into consideration in their traffic study or analysis of impacts.

Furthermore it has been clear for some time that the adjacent cities have not been adequately integrating their traffic analysis. Attachment D is a comparison of roadway traffic volumes on each side of the city limits of Vista. This was requested as part of the Circulation analysis by the Vista Planning Commission. It is clear that there are significant differences between the cities of Vista and Carlsbad on the major roads that cross their borders. This discrepancy alone should have resulted in Carlsbad reviewing their traffic model input, and conducting an analysis of the reason for the discrepancies.

US Army Corps of Engineers
Regulatory Branch – San Diego Field Office
Attn: CESPL-CO-200100215-SKB
16885 W. Bernardo Drive, Suite 300-A
San Diego, CA 92127

December 2, 2001

Application No: 200100215-SKB
Calavera Hills Phase II Master Plan
Bridge and Thoroughfare District No.4
& Detention Basins

Dear Ms. Bryant,

This letter is in response to the public notice for Application No: 200100215-SKB for Calavera Hills Phase II Master Plan Bridge and Thoroughfare District No.4 & Detention Basins (Calavera II). This letter replaces the previous letters submitted on November 26, 2001 by Gigi Orlowski and by Diane Nygaard for Preserve Calavera.

Preserve Calavera is a grassroots nonprofit organization of local residents and users of the largest remaining contiguous native habitat in coastal North County – the area in Northeastern Carlsbad referred to as Calavera. Our objectives are to preserve and protect this area. The Calavera II project proposes significant destruction of wetlands associated with three identified creeks and two lagoons – all of which are protected as Waters of the U.S. (WUS). The analysis of impacts as documented in the DEIR is inadequate to assess the impacts to these WUS. Consequently, the project sponsors have failed to meet the guideline for issuance of the requested permits

To formulate these comments a review was made of the DEIR for the Calavera Hills Phase II Master Plan project. Preserve Calavera submitted extensive comments to this DEIR. Meetings with Carlsbad City Planning to discuss these comments are currently pending. We also reviewed the Regulatory guidance letter No. 01-1 dated October 31, 2001 and our comments follow the quoted specific guidelines (by number) from this letter.

Guidance Item 2. General Considerations

All mitigation required by the Corps should be based on a consideration of regional aquatic resource requirements.

Comment

To properly assess these regional considerations, we believe that a better definition of the preferred project and its viable alternatives still need to be developed for the proposed projects. There are several reasonable alternatives that would greatly reduce wetlands' impacts that were not considered. The majority of the impacts to wetlands are from the unnecessary extension of roads into this area. The alternative roadway configurations that avoid the wetland impacts were not properly identified or assessed.

While some of these impacts will be mitigated in the 404, 401 and Section 7 negotiations with the concerned agencies, including the Corps of Engineers (COE), a complete impact and mitigation assessment is not possible at this time until the issues in the current project DEIR are resolved. For example, what would be the impacts to the wetlands and downstream Waters of the U.S. (WUS) by eliminating the Reach 4 of Cannon Road? The applicant concluded that the "No Intersection" alternative was not acceptable because of the need for access to the High School and the adverse impact on build-out regional traffic circulation. Preserve Calavera has discussed access to the high school with the Asst Superintendent responsible for facilities planning. He stated that access to the proposed high school was off of College and that they did not require Cannon Rd. He further stated that they were concerned about the loss of land on

their school site from the combination of the two roads and the detention basin location, which would give them less flexibility in using the remaining site.

Furthermore, the traffic studies provided by the City do not segregate trips associated with the high school – they only show combined total trips on roadway segments. They have not done any specific analysis of the impacts of removing the roads on school access. They have eliminated this alternative partially on assumptions about school traffic but have no analysis to back up their claims.

The analysis of impacts on regional traffic circulation does not take into account the recent action by the City of Vista to eliminate the extension of Cannon Road from its current terminus in Oceanside through to Highway 78. This will greatly reduce the number of trips on Cannon Road as it will no longer be the primary regional connector. The traffic analysis needs to correctly reflect the high school and regional trips before roadway alternative can be properly evaluated. We believe correcting this analysis will show there is no justification for Cannon Reach 4 and the resulting wetlands' destruction.

The project sponsors failed to assess the most reasonable alternative to eliminate Reach 4 of Cannon Road. This is the alternative supported by the Wildlife agencies. This will change a four-way roadway intersection to a three-way intersection and could significantly reduce the wetlands and other sensitive habitat impacts.

The proposed project could also destroy sensitive habitat occupied by endangered species because practical alternatives were not included that would mitigate these biological impacts. The location of the least bell's vireo sighting is in an area of particularly high quality habitat. It is not reasonable to assume that restoration of this habitat in the vicinity of 2 four-lane divided highways will provide comparable conditions that would allow continuation of this species in the project area. No alternative has been proposed that would avoid impacts to this area.

Guidance Item 3. Compensatory mitigation project development

a. Compensatory mitigation plans

..... At a minimum, the components listed below should be considered and included in the mitigation plan and/or special permit conditions.....

Comments are made to each appropriate numbered component from this guideline Item 3a. All of the components are listed by number for ease of reference.

1. Baseline information

Comment:

From a review of the DEIR for this project, the hydrology and water quality issues have not been completely addressed, in light of the new San Diego County NPDES stormwater construction and site runoff permit requirements for housing development and associated infrastructure projects. This will have significant effects on "baseline" conditions of the preferred project and its alternatives. Compliance with these requirements can change not only the project design flows, but the type and quality of the site(s) runoff, detention basins, and associated road alignments. Until these Calavera II DEIR revisions are completed, the impacts to Waters of the US (WUS) and associated wetlands and water quality impacts from all the components of the project cannot be properly assessed and thus able to be properly mitigated by this 404 permit. These NPDES stormwater requirements will also have an effect on the impact assessment for this permit due to the cumulative impacts to the three identified creeks, all of which are defined as WUS. For example, cumulative impacts along Little Encinas Creek have not been adequately addressed. Old-timers in the area report that modifications in stream flow, beginning with the construction of the homes in the Ocean Hills Country Club, has undermined the banks and old growth trees in the riparian areas. Drainage pipes from this project continue to discharge to the creek, and the downstream impacts are significant and increasing. The standards that were allowed years ago when this project was built are no longer acceptable today. Additionally, the Rancho Carlsbad community, which was purchased by the residents a few years ago, has a bankruptcy settlement agreement to assess homeowners for the costs of creek dredging within their community. This dredging has not yet taken place. City staff recently assessed

this project and concluded that dredging could impact trees along the shore that are part of the protected habitat. This planned dredging should have been identified in the project description and plans for this integrated into project mitigation for cumulative impacts.

There also remain significant cumulative impacts from the Calavera II project runoff to two large lagoons approximately two (2) miles downstream, Agua Hedionda and Buena Vista. Both of these have significant potential impacts from upstream contributions to water quality and sedimentation. While this project is located outside the coastal zone resources, there are potentially significant cumulative hydrological and water quality impacts to these lagoons that should be addressed. Both of these lagoons are within the jurisdiction WUS and thus are part of the potential impact assessment of this permit because of cumulative impacts. For example, the MHCP and Carlsbad's associated Habitat Management Plan (HMP) identifies this regional area as a core area for habitat protection. Yet the project proposes a roadway through the center of this core area, which could have cumulative impacts to the functioning of the entire preserve ecosystem. The proposed extensions of College and Cannon Rd were not properly included in this regional plan. This plan includes the protection of wetlands with language very similar to that of the Army Corps of Engineers guidelines.

All three of the creeks impacted by this project converge within the project boundaries, and then flow as Agua Hedionda Creek to Agua Hedionda Lagoon. These convergence points require more specific analysis in order to determine that there is adequate mitigation for the impact to beneficial uses of these waterways. Cumulative impacts on the WUS did not assess the combined effects of the upstream development as well as the extensive recent development along Agua Hedionda Creek west of El Camino Real. The mitigation proposed for these cumulative impacts which include water quality, flow rates, and sedimentation need to have further environmental assessment.

3 Mitigation Plan

Comment:

Until the project description and alternatives analyses have been sufficiently addressed, such a mitigation plan is premature due to many outstanding issues for the current DEIR, which have not yet been discussed with Carlsbad City Planning. The DEIR addresses some project components only on a programmatic level and are not project specific enough to complete a mitigation plan, (for example, Cannon Reach 4.) It should also be pointed out that more than one project is being considered in the DEIR and the level of impact assessment is not sufficient to develop mitigation plans at this time for each of the components on a project specific level nor on an integrated level for the entire project.

4. Success Criteria

Comment:

Concerns have also been raised in the DEIR regarding the effectiveness of previous local erosion and wetland impact mitigation from nearby projects from both Calavera Phase I and other Calavera Hills projects such as The Cape and The Crest, which are similar to this one. A conceptual mitigation monitoring program for this project has not been completed nor submitted, which also will effect the negotiations and impact assessments for this permit.

5. Monitoring Plan

Comment:

Appropriate mitigation must also include a specific plan for Army Corps monitoring to assure that the agreed to mitigation plan is carried out, with written progress reviews accessible by the public.

6. Contingency Plan See comment to components 4-Success Criteria and 5-Monitoring Plan above.

9. Responsible party for long-term maintenance See comment to component 5-Monitoring Plan above.

Summary

Finally, a factor that must be considered in issuing this permit(s), is that *"...such a permit must be found to be not contrary to public interest and an analysis of alternative project designs that may avoid negative impacts to the aquatic ecosystem must be fully considered..."*

We also believe that the potential water resource project specific and cumulative impacts should be assessed in greater detail for the 404 mitigation plan. While it seems that a Federal EIS (NEPA) would not be required, please consider performing an environmental assessment to assure that the significant impacts and potential mitigation measures have been addressed in sufficient detail for the preferred project and all the viable alternatives.

We are, hereby, requesting a public hearing on this project to receive concerns not only about the cumulative impacts of runoff and runoff of the project sites, but the extension of existing roads and location and sizing of the two detention basins, which are the significant factors in assessing impact for this permit(s) as explained above. This project has been the subject of on-going regional controversy, has undergone significant changes since the distribution of the DEIR including mitigation related to NPDES compliance, and there has been no public distribution of these changes. The project description provided with the Army Corps notice failed to mention any of these recent changes and therefore provides an insufficient basis for informed public comments.

Written progress updates to Preserve Calavera and other concerned parties would also be appropriate until some of the significant project hydrology and water quality concerns are completely addressed.

Thank you for your consideration of our comments.

Sincerely,

Gigi Orłowski, Board Member
Preserve Calavera
(760) 729-2945